SUPREME COURT OF THE UNITED STATES

October Term, 1969

KRAFFT *v.* NEW YORK

APPEAL FROM THE COURT OF APPEALS OF NEW YORK

No. 474. Decided November 10, 1969

PER CURIAM.

The appeal is dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for a writ of certiorari, certiorari is denied.

evidence, the only legal issue presented, considered, reviewed, and determined by the Colorado Supreme Court was whether or not Senate Bill 405 (C.R.S. 123-35-1, et seq ('67 Perm. Supp.)) contravened Article V, § 25 of the Constitution of Colorado.

Colo. R. Civ. P., Rule 115(c)(5) requires that all briefs before the Supreme Court of Colorado contain in applicable part: "The argument exhibiting clearly, separately and without unnecessary repetition the point of facts and law being presented and citing the authority and statutes relied upon". Even though appellees were successful in the trial court, they had the option on writ of error to raise the equal protection argument in support of the trial court's judgment. However, appellant elected to stand solely on the special legislation issue.

Even though the Colorado Supreme Court relied on *Williams* v. *Mayor and City Council of Baltimore*, 289 U.S. 36, 53 S.Ct. 431, 77 L.Ed. 1015 (1933), such fact is not indicative that the court determined the case on federal grounds. The rationale of *Williams* adopted by the Supreme Court of Colorado was a state issue and not a federal issue. In arriving at its conclusion as to the validity of Maryland law, this Court said: "Our endeavor in what follows is to extract the essence of the decisions [Maryland] and give effect to it as law." (pg. 46, U.S.). Consequently, the judgment below is grounded solely on state grounds — was Senate Bill 405 in conflict with the interdiction of Article V, § 25, Constitution of Colorado.

The Fourteenth Amendment question is first raised before this Court by the jurisdictional statement. The issue of whether the statute in question is invalid as re-

pugnant to the Constitution of the United States was not presented to, considered by or expressly passed on by the Colorado Supreme Court. It follows therefore that this Court is without jurisdiction to consider the issues raised by appellant and the appeal must be dismissed. *Wilson* v. *Cook*, 327 U.S. 474, 66 S.Ct. 663, 90 L.Ed. 793 (1946).

Motion to Affirm

The appellees move, in the alternative, pursuant to U.S. Sup.Ct., Rule 16 1.(c), 28 USCA for affirmance of the judgment of the Supreme Court of Colorado on the ground that the questions presented are so unsubstantial as to not need further argument.

Argument in Support of Motion to Affirm

The Constitution of the United States in no manner or form proscribes or inhibits a state from enacting special legislation. The question presented therefore is whether the legislation in question contravenes the Equal Protection Clause of the Constitution of the United States. We submit that the authorities relied on by appellant to formulate an equal protection issue are pellucidly inapposite and no equal protection question of substance is presented.

Taxation is not an assessment of benefits. The foundation of appellants equal protection argument is that the tax burden of the school district outweighs or is disproportionate to the benefits which accrue to the appellant by virtue of the formation of the Morgan County Junior College District. In support of this grievance,

appellant cites authority applicable to special improvement districts. Principles relating to special improvement districts are not relevant to a school district which may, incidently, possess the authority to levy and assess an ad valorem tax to the extent necessary to fulfill its public purpose. *Atchison T. & S.F. Ry. Co.* v. *Public U. Commission*, 346 U.S. 346, 74 S.Ct. 92, 98 L.Ed. 51 (1953).

A school district is an instrumentality of the state designed as a means to provide education. It is a vehicle to accomplish a public purpose and is created pursuant to the legislative general welfare prerogative. Any authority to tax therefore is an authority to tax in support of government. In this regard, the following statement of this Court is pertinent:

> "A tax is not an assessment of benefits. It is as we have said, a means of distributing the burden of the cost of Government. The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes.... Any other view would preclude the levying of taxes except as they are used to compensate for the burden on those who pay them, and would involve the abandonment of the most fundamental principal of government — that it exists to provide for the common good." *Carmichael* v. *Southern Coal & Coke Co.*, 301 U.S. 495, 522, 57 S.Ct. 868, 81 L.Ed. 1245 (1937).

It necessarily follows that equal protection imposes no rigid rule of equality of taxation. *Carmichael* v. *Southern Coal & Coke Co.*, supra.

"Territorial uniformity is not a constitutional requisite." The equal protection argument is further augmented by the complaint that only those within the district are liable for a property tax while those without are free of the tax burden. This premise is equally unsubstantial. Equal protection does not require territorial uniformity. Equal protection is concerned with persons and not territory. As stated in *Salisburg* v. *State of Maryland*, 346 U.S. 545, 74 S.Ct. 280, 98 L.Ed. 281 (1954):

> "The Equal Protection Clause relates to equality between persons as such rather than between areas. (pg. 551, U.S.) . . .
>
> "Territorial uniformity is not a constitutional requisite." (pg. 552, U.S.).

A state law need not therefore apply to the total area of a state but may properly be imposed as to those within a part of the state provided that the law uniformly applies to all within that territory. *Salisburg* v. *State of Maryland*; supra; *Milhelm* v. *Moffat Tunnel Improvement District*, 262 U.S. 710, 43 S.Ct. 694, 67 L.Ed. 1194 (1923).

The decision of the Supreme Court of Colorado is conclusive as to the rational basis which supports the enactment of the statute. Thirdly, appellant ardently contends that there is no rational basis for the enactment of the law and thereby results in an invidious discrimination against him. In this regard, the decision of the Supreme Court of Colorado is dispositive, if not conclusive. As held by the Colorado Supreme Court, the executive servant of the General Assembly effectuated an unwarranted frustration of the legislative intent expressed by the general law providing for the formation

and establishment of junior college districts. In order to fulfill the legislative mandate of the general law which was "... set for naught by the device of an administrative moritorium.", it became necessary for the General Assembly of Colorado to enact Senate Bill 405 "... to meet the exigency created by the State Board of Education ...". *Morgan County Junior College District* v. *Jolly*, ... Colo. ....., 452 P.2 34, 37, 38 (1969). Under such circumstances, the rationale of this Court expressed in *Williams v. Mayor and City Council of Baltimore*, supra and adopted by the Colorado Supreme Court is decisive.

The questions raised are not of constitutional dimensions, but political questions. In essence the questions raised by the appellant are not of constitutional dimensions, but are in reality political questions. Whether or not the citizens of the district desire the benefits of a junior college conveniently located within their territorial limits or wish to forego such benefit and send their children to a more distant junior college is a political question to be determined by the citizenry. Likewise, whether the junior college district remains a local district or becomes a state junior college as provided by statute is a question of relative benefit and advantage to be determined by the citizenry of the district and therefore a political question. C.R.S. '63, 124-26-29 ('67 Perm. Supp.).

Conclusion

The questions raised by appellant's jurisdictional statement raise no federal issue which necessitates further argument. The judgment of the Supreme Court of Colorado should be affirmed.

Respectfully Submitted,

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